

# Exhibit A

RACHEL SPIVACK vs  
CITY OF PHILADELPHIA and LAWRENCE S. KRASNER

ROBERT LISTENBEE, JR.

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3           -----

4           RACHEL SPIVACK,                                 :   CASE NO. 2:22-cv-  
            Plaintiff,   :   01438-PD  
   :  
5                         v.                                     :  
   :  
6           CITY OF PHILADELPHIA and                     :  
            LAWRENCE S. KRASNER,                         :  
7           Defendants   :  
8

9                         -----  
                            Friday, August 5, 2022  
                            -----

10           Zoom pretrial deposition of ROBERT LISTENBEE, JR.,  
11           held in the offices of Schnader, Harrison, Segal &  
12           Lewis LLP, 1600 Market Street, Suite 3600,  
13           Philadelphia, Pennsylvania 19103, commencing at  
14           10:02 a.m., on the above date, before Mickey Dinter,  
15           Registered Professional Reporter, Certified Court  
16           Reporter and Notary Public for the Commonwealth of  
17           Pennsylvania.  
18

19                         -----  
20                         -----  
21                         RELIABLE COURT REPORTING  
                            1650 Arch Street  
                            Suite 2210  
22                         Philadelphia, PA 19103  
                            215.563.3363  
23                         -----

24     
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1 A P P E A R A N C E S:

2  
3 CHRISTINA MARTINEZ, ESQUIRE  
4 245 Bricktown Way, Suite J  
5 Staten Island, NY 10309  
6 (347) 215-4543  
7 christinamartinezesq@gmail.com  
8 Counsel for Plaintiff

9  
10 CLARK HILL PLC  
11 BY: JESSICA REILLY, ESQUIRE  
12 2001 Market Street  
13 Suite 2620  
14 Philadelphia, PA 19103  
15 jreilly@clarkhill.com  
16 Counsel for the City of Philadelphia

17  
18 SCHNADER, HARRISON, SEGAL & LEWIS.  
19 BY: DAVID SMITH, ESQUIRE  
20 1600 Market Street, Ste. 3600  
21 Philadelphia, PA 19103  
22 215-751-2000  
23 Dsmith@schnader.com  
24 Counsel for Lawrence S. Krasner

25

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1 That was sometime in, I'm pretty sure, in  
2 January, I believe; January, February, March.  
3 I don't remember the exact date.

4 Q. January of 2022?

5 A. Bear with me for a moment. Let me  
6 think about it for just a moment.

7 Q. Okay.

8 A. I believe that the vaccination policy  
9 was either May or began implementation in  
10 early March.

11 Q. We'll get to the policy. Do you  
12 know if it was, if the decision to implement  
13 a mandatory vaccine policy was made after  
14 the City's mandatory vaccine policy was  
15 implemented?

16 A. I was not paying close attention to  
17 the date and time of the implementation of  
18 the City's policies.

19 Q. So, it was a separate, independent  
20 decision from the City's...

21 A. We did not have a meeting and say  
22 that we were going to implement this policy  
23 because the City was implementing its  
24 policy, to the best of my knowledge.

25 Q. Who created the specific policies

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1 and procedures for the vaccine management  
2 in the DA's office?

3 A. Those policies were developed, I  
4 believe, primarily by Cecilia Madden and  
5 in consultation with the DA. However, there  
6 was a senior staff meeting where they were  
7 discussed and we were asked by the DA if we  
8 approved other recommendation in the  
9 policies. I personally recall that I approved  
10 others and encouraged them.

11 Q. Was there, like, a vote?

12 A. We didn't have votes, per se. We  
13 were asked our opinions and several of us  
14 gave our opinions and I gave mine.

15 Q. Do you remember anybody else's  
16 opinions?

17 A. Well, the DA at one point asked if  
18 there was anybody who objected to the  
19 policies. I do not recall anybody  
20 objecting.

21 Q. Was it just Cecilia Madden and DA  
22 Krasner who was tasked with coming up with  
23 the specific requirements of the vaccine  
24 mandate?

25 A. No.

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1 MR. SMITH: Objection to form.

2 You may answer.

3 A. The DA is an independently elected  
4 official in the City and, as such, he has  
5 certain discretionary policies over the  
6 District Attorney's Office that are different  
7 than the policies that the mayor may impose  
8 on all the other offices and organizations  
9 that are under the City mandate.

10 Q. Who decided to provide religious  
11 and medical exemptions to the DA'S Covid 19  
12 mandate?

13 MR. SMITH: Objection to form.

14 You may answer.

15 A. The final decision on medical  
16 exemptions and religious exemptions was  
17 recommended by the DA and the senior staff  
18 all agreed that this was a policy that we  
19 thought was important to impose.

20 Q. So, can you explain to me how exactly  
21 that decision was made?

22 A. We had a fairly lengthy discussion,  
23 massive discussions, by various members of  
24 the team. There was deep concern about how  
25 we, as an office, were dealing with the

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1     senior citizens which, in our office, were  
2     over the age of sixty. There was deep  
3     concern about how we, as an office, were  
4     dealing with family members who had children  
5     for whom there was no vaccination available  
6     at that time. There was deep concern about  
7     how we, as an office, could continue to  
8     function as an effective prosecutorial  
9     agency within the City of Philadelphia and  
10    meet the demands and requirements of the  
11    courts. The courts were opening up more  
12    and more courtrooms. So, there were lots of  
13    issues that were paramount to us and each  
14    of us had a particular area that was of  
15    great concern to us. I was deeply concerned  
16    about children and deeply concerned about  
17    senior citizens personally. I was asked --  
18    those are the things that I stressed. In the  
19    final analysis, the senior staff meeting  
20    participants all agreed that we shall  
21    impose those policies.

22                   The DA, he was an expert on  
23    one area. He discussed the legal research  
24    that he had done with us at that meeting.  
25    After that discussion, we all agreed with

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1 him.

2 Q. What makes DA Krasner an expert on  
3 religious exemptions?

4 MR. SMITH: Objection to  
5 form.

6 A. The DA had done research on -- he's  
7 a lawyer and a legal scholar. He does  
8 research on lots of different issues.

9 When we have a senior staff  
10 meeting, if the DA asked questions about  
11 issues related to juveniles, I'm the expert.  
12 I am an expert on juvenile practice. I was  
13 chief of the Juvenile Unit of the Public  
14 Defender's Office for twenty-seven years.  
15 I was in the administrative office for four  
16 years and I've been supervising prosecutorial  
17 issues regarding juveniles for the last  
18 four-and-a-half years, so I consider myself  
19 an expert. The DA has areas of expertise  
20 the same way each one of us do. Judge Temin  
21 has expertise on judicial policy and  
22 practice. Each one of us utilized our  
23 expertise for situations we had. People  
24 would often defer to me or defer to the DA  
25 depending upon the issue or defer to



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1     **Judge Temin. We were asked to gather**  
2     **information and present them to the team.**

3           Q. Okay. You just mentioned some  
4     qualifications that you have that would  
5     qualify you as an expert on juvenile issues.  
6     What qualifications does DA Krasner have  
7     that would qualify him as an expert on  
8     religious exemptions?

9                         MR. SMITH: Objection.

10                        **THE WITNESS: He had done**  
11                        **considerable research on the issue. He**  
12                        **was our expert on the issue. As I**  
13                        **indicated, each of us had our own**  
14                        **background and experience. Each one of**  
15                        **us was a lawyer who had done extensive**  
16                        **research on cases related to specific**  
17                        **topics.**

18                        The DA presented what he  
19                        thought was a sound position. We  
20                        discussed it and we agreed.

21     BY MS. MARTINEZ:

22           Q. Did the DA's office, this team that  
23     was implementing the religious exemption,  
24     did you consult with anyone who was an  
25     expert in religious accommodations?

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1 employees may need to wear masks when  
2 entering City buildings and the courthouses?

3       **A. This policy is referring to the**  
4 **requirement that the First Judicial District**  
5 **had that said that lawyers and other staff**  
6 **from the District Attorney's Office, other**  
7 **staff, meaning even police officers entering**  
8 **the building, had to follow the updated**  
9 **mask-wearing policy or they cannot get in**  
10 **the building. That's what it was focused**  
11 **on.**

12       Q. Into what building?

13       **A. The Criminal Justice Center.**

14       Q. What about the DAO office?

15       **A. We had a different set of policies.**

16       Q. Did the City mask-wearing policy  
17 apply in the DA's office?

18               MR. SMITH: Objection to form.

19               **THE WITNESS: As I have said,**  
20 **the DAO had a separate set of policies.**  
21 **In some cases, we adopted City policies;**  
22 **others, we did not. We had the**  
23 **discretion to do that because the DA was**  
24 **an independently elected official.**

25               **Regarding wearing masks, we**

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1 for granting religious exemptions at the  
2 DAO?

3 A. Yes. That was reviewed by the DA  
4 and discussed in great detail, but those  
5 discussions were not initially discussions  
6 that I was a part of.

7 Q. Do you know if there was an appeal  
8 process included?

9 A. Yes.

10 Q. Yes, there was an appeal process?

11 A. Yes.

12 Q. How did employees that were denied  
13 able to appeal the denial?

14 A. I'm not really familiar with the  
15 appeals process. That was handled by the  
16 DA and by Cecilia Madden at the time.

17 Q. Okay. I want to move on. What type  
18 of DAO employees are union members?

19 A. At the present time, there are about  
20 twenty law enforcement personnel who are  
21 members of the Philadelphia Police Department  
22 and the Fraternal Order of Police, the FOP.  
23 There are also civil servants who work in  
24 administrative capacities in a variety of  
25 different units. I don't know the exact

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1     number.  It's probably less than fifteen;  
2     probably closer to about eight or nine, but  
3     I don't know the exact number who worked  
4     in an administrative capacity throughout  
5     our office.  I don't know the name of the  
6     unit they are part of.  It's part of the  
7     large administrative municipal units in the  
8     City of Philadelphia.

9           Q.  Are any attorneys member of a union,  
10    to your knowledge?

11           A.  No.

12           Q.  Does the DAO have any --

13           A.  To the best of my knowledge, the  
14    answer is no.  I say that because we do  
15    have attorneys who are not practicing as  
16    assistant district attorney's and who are  
17    working in administrative capacities in  
18    other parts of the office.  I cannot identify  
19    who they are.  I do know there was at least  
20    one.  Whether that person is a member of a  
21    union or not, I would not know.  That's  
22    technically detailed.  There could be some-  
23    body.  There are not assistant district  
24    attorneys in a union.

25           Q.  Does the DAO have the discretion to

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1 Q. Ever?

2 A. Subsequently, he discussed the  
3 option of whether or not she was willing to  
4 work from home and work in the Law Division.  
5 He did mention that to me because I was so  
6 involved with her while she was working as  
7 an employee within the Juvenile Diversion  
8 Unit.

9 Q. Was that offered to Rachel when she  
10 was an employee at the DAO?

11 A. To the best of my knowledge, no.

12 Q. Why not?

13 A. I don't know. I was not having  
14 those discussions at that time and I had not  
15 been having discussions with the DA and the  
16 attorneys in this matter until I was asked  
17 to participate in this deposition.

18 Q. What accommodations were considered  
19 by DA Krasner when he decided not to grant  
20 any religious exemptions at the DAO?

21 MR. SMITH: Objection to form.

22 THE WITNESS: I don't know.

23 BY MS. MARTINEZ:

24 Q. Did he discuss any alternative  
25 accommodations with you?

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1           **A. Pleased to meet you, Miss Reilly.**

2           Q. In the beginning of your testimony  
3 this morning, you talked a little bit about  
4 the City's vaccine mandate and its  
5 application.

6           **A. Yes.**

7           Q. So, the union employees that work in  
8 the DA's office would be subject to the  
9 City's policy because of the collective  
10 bargaining agreement between the City and  
11 those union employees, do you understand  
12 that?

13          **A. I do.**

14          Q. And that's, I think it was,  
15 Exhibit Number 5, what Miss Martinez was just  
16 showing you was an example of one of those  
17 agreements. Based on the City's vaccine  
18 policies subject to a CDA, do you  
19 understand that?

20          **A. Yes.**

21          Q. That would include certain workers  
22 like you were describing, like the police  
23 officers or other civil servants under the  
24 City's vaccine mandate?

25          **A. Yes.**

1     there was confusion where the City had ran  
2     an exemption and where we were not planning  
3     on an exemption. It was not religious; it  
4     was medical.

5           Q. Based on your personal knowledge,  
6     you don't know whether or not the DAO  
7     eventually denied or granted that request?

8           A. That's correct, I do not know.

9           Q. Okay. I want to transition to your  
10    testimony about certain meetings you had  
11    with other senior staff members and the DA  
12    where you discussed the DAO policy. No one  
13    from the City was present during those  
14    meetings, right?

15          A. That's correct, no one from the City  
16    was present except -- let's keep in mind the  
17    term "from the City" is a term of art. We're  
18    all City employees. So, yes, we were there.  
19    There was no representative from City  
20    government present or from the City  
21    Solicitor's office present or any expert in  
22    any area from the Health Department present.  
23    That's what I mean.

24          Q. Just to go a little bit further. Are  
25    you familiar with the Employee Relation Unit

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1 within the City?

2 **A. Yes.**

3 Q. No one from the ERU was present  
4 during those meetings?

5 **A. That's correct.**

6 Q. Thank you for clarifying that.

7 **A. Sure.**

8 Q. At the March 4th meeting between you  
9 and the plaintiff and certain other senior  
10 staff personnel, that meeting only included  
11 DAO personnel, correct?

12 **A. Correct.**

13 Q. I will ask the same question. No one  
14 from the City, understanding the City to  
15 mean how you just described it, was present  
16 or involved in that meeting?

17 **A. That is correct.**

18 Q. And no one from the City, as you  
19 described it, was involved in or included  
20 in the Executive Team?

21 **A. That's correct.**

22 MS. REILLY: Thank you very  
23 much for your time, Mr. Listenbee. I  
24 don't have any further questions.

25 **THE WITNESS: Thank you.**